Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1997

MANFRED KRUGER and
CRISTINA KRUGER,
Petitioners,

vs.

SONIC RESTAURANTS INC.,
Respondent

Petition For A Writ Of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

MANFRED KRUGER and
CRISTINA KRUGER
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63 pp

QUESTIONS PRESENTED

I. May a federal court enforce a contract which by its terms necessitates commission of a federal crime?

II. May a district court grant a motion for summary judgment when there is a disputed material fact?

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

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No.

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MANFRED KRUGER and
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SONIC RESTAURANTS INC.
Respondent

Petition For A Writ Of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners, Manfred Kruger and Cristina Kruger, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The unreported opinion and order of the Court of Appeals are reproduced in the Appendix filed herewith at 1a. The unreported judgment and order of the district court are reproduced in the Appendix filed herewith at 7a and 26a, respectively. The unreported memorandum opinion of the District Court in this case is reproduced in the Appendix filed herewith at 30a.

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on January 7, 1997. The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

The pertinent provision of Title 26 of the Internal Revenue Code, 26 U.S.C.A § 7201 is set forth below:

§ 7201. Attempt to evade or defeat tax.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

The pertinent provision of Title 26 of the Internal Revenue Code, 26 U.S.C.A § 7207 is set forth below:

§ 7207. Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to the Secretary any list, return, account, statements, or other document, known by him to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

STATEMENT OF THE CASE

Manfred and Cristina Kruger both worked for Sonic Restaurants Inc. (hereinafter "S.R.I.") Manfred was an area supervisor, while Cristina was an hourly employee. The Krugers working relationship with S.R.I. lasted from November, 1993 until April, 1995. During their employment, the Krugers timely filed W-4 forms and S.R.I. withheld appropriate employee taxes. On separate occasions, the Krugers each sustained serious injuries while working. After these incidents, S.R.I. terminated the Krugers' employment. After their terminations, S.R.I. withheld Mr. Kruger's final two paychecks. The Krugers needed their money desperately, but were unable to compel S.R.I. to give them the past due paychecks. After Manfred Kruger informed S.R.I. of his financial hardship, S.R.I. Vice President of Operations, Frank Young, contacted Mr. Kruger and arranged for a brief meeting where he promised to tender Mr. Kruger's final two month's paychecks. Mr. Young would be boarding a flight at the local airport,

and arranged for the Krugers to meet him at his departing gate.

When the Krugers met Mr. Young at the airport gate, Mr. Young stated that he would only give the Krugers' already earned paychecks in exchange for the Krugers' signatures on a termination agreement (hereinafter "the Agreement" reproduced at App. 10a). Neither S.R.I. nor Mr. Young provided the Krugers with a copy of the contract before the meeting. The Agreement was not bargained for, in the sense that the Krugers had no input nor prior notice of contract's contents. When they arrived at the gate, the Krugers were only given a brief opportunity to glance over the Agreement, roughly ten minutes, before Mr. Young had to board his departing flight. They barely had time to finish reading it before Mr. Young had to leave. The Krugers were given no time to discuss the contract between themselves, nor did they have time to confer with a lawyer. They did not have adequate time or bargaining power to discuss the contract with Mr. Young before Mr. Young had to leave. The

Krugers needed the money desperately, and felt they had no choice but to sign the contract before Mr. Young left. S.R.I.'s previous behavior of withholding paychecks, coupled with S.R.I.'s superior bargaining position led the Krugers to reasonably believe that S.R.I. would not be willing to give them their final paychecks if they did not immediately sign the contract.

The main thrust of the Agreement was to characterize the Krugers' employment history as one of independent contractors, rather than one of employees. One can infer that by this contract S.R.I. hoped that it could claim before the federal courts and federal government that the Krugers had never been S.R.I. employees for purposes of government regulations, despite S.R.I.'s previous memos to the contrary, S.R.I.'s withholding of state and federal taxes from the Krugers' paychecks, S.R.I.'s filing of W-2 forms and North Carolina Employment Security forms, and a work history which showed that the Krugers were anything but independent contractors. Additionally, the contract provided a "liquidated

damages" clause. The clause stated that S.R.I. could claim $26,000 as "damages" should the Krugers file for unemployment or disability benefits--benefits they paid for by the taxes withheld by S.R.I. Finally, the contract called for Mr. Kruger to file a 1099 form with the Internal Revenue Service, despite S.R.I.'s previous filings of W-2 forms for Mr. Kruger. See App. at 14a. Under the terms of the contract, the Krugers are precluded from claiming to anyone in any manner that they were ever S.R.I. employees.

When Mr. Kruger had filed for unemployment and worker's compensation benefits as an S.R.I. ex-employee, S.R.I. brought suit against the Krugers in the Federal District Court for the Western District of Oklahoma. The District Court had diversity jurisdiction, with the amount in controversy exceeding $50,000. Under a breach of contract theory, S.R.I. sought damages as provided in the Agreement, and further sought injunctive relief to prevent Mr. and Ms. Kruger from further violating the Agreement. Broke and unemployed, Mr. and Ms. Kruger defended themselves *pro se*.

Among various defenses and counterclaims, the Krugers raised as an affirmative defense the fact that they signed the Agreement under duress. The Krugers also argued that the Agreement by its terms would force the parties commit criminal acts, namely tax fraud. On motion for summary judgment, the District Court rendered a memorandum opinion and order on March 22, 1996, granting partial summary judgment. Final judgment was rendered on May 29, 1996, granting monetary relief and ordering a permanent injunction against the Krugers.

The Krugers, again acting *pro se*, appealed their case to the Federal 10th Circuit. After denying the Kruger's motion for oral argument, the Tenth Circuit issued its opinion and order on January 7, 1997, sustaining the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The reason why the Supreme Court should grant the writ of certiorari is two-fold. First, the opinion of the Tenth Circuit in this case has created a rift between the Tenth and Seventh circuits as to the enforceability of the kind of contract involved herein. App. A, 1a; *United States v. Jungles*, 903 F2.d 468 (7th Cir. 1990). The Tenth Circuit has upheld a contract which forces the parties to lie the Internal Revenue Service about Mr. Kruger's employment status, and would allow S.R.I. to avoid paying employee related taxes on Mr. Kruger.

Indeed, the Tenth Circuit has upheld a permanent injunction of the district court *ordering* Mr. Kruger to either mislead the I.R.S. or be held in contempt. App. 2a, 8a. Previously, the Seventh Circuit has held a similar contract to be void as the contract could be considered by a jury to be evidence of a criminal act. 903 F.2d at 474. The Supreme Court needs to make a determination as to whether this kind of contract should be enforced by the courts.

Second, the appellate court was in error by upholding the district court's factual determination and ruling that the Krugers were not under duress when they signed the contract. App. 4a. Allowing this decision to stand despite that error could have national ramifications in cases similar to this one--where a *pro se* defendant, an unsophisticated layman, attempts to defend himself against skilled attorneys with practically unlimited resources. It should be incumbent upon a court in such an instance to give equal treatment to both sides. What happened in this case sets an unfortunate precedent that if a person cannot afford the same legal service as his adversary, he is not entitled to fair trial procedure. The Krugers are not trained in the legal intricacies of federal courts. They were unable to locate affordable counsel to represent them. They tried their best to represent themselves. Nevertheless, the district and appellate courts were more impressed with the arguments and authorities presented by S.R.I., to the point that they ignored the relevant evidence the Krugers presented before them. The Supreme Court should consider this

petition and show that the Federal court system provides equal justice, even to unequal participants.

I. A FEDERAL COURT MAY NOT ENFORCE A CONTRACT WHICH NECESSITATES COMMISSION OF A FEDERAL CRIME.

For purposes of Federal law, whether a person is an employee or an independent contractor depends on several factors such as control, permanency of relationship, skill required, investment in the work facilities, etc. *Bartles v. Birmingham,* 332 U.S. 126 (1947); See *United States v. Silk et al. and Harrison v. Greyvan Lines,* 331 U.S. 704 (1947). A contract between the employer and the employee will not change the analysis or the outcome of the determination. *Id.*

A brief review of the evidence presented to the district court shows that under analysis, Mr. Kruger was an employee of S.R.I.: S.R.I. trained Mr. Kruger in Texas, transferred him (expenses paid) to Louisiana and then to North Carolina, supervised

him in his work, and provided him with all necessary equipment and facilities. However, the Agreement not only stipulates that Mr. Kruger was an independent contractor, but states that he cannot claim otherwise. App 12a, 14a. Mr. Kruger repeatedly argued that the Agreement was criminal and false with respect to his employment status. But the appellate court felt that this argurment was irrelavent; they ruled the Agreement was binding regardless. App. 5a. However, since a private contract cannot alone alter one's employment status, should Mr. Kruger have been an employee of S.R.I., then the contract and the district court's injunction force Mr. Kruger to tell a falsehood. See *Bartles,* U.S. at 132, Such a contract is generally against public policy, and in this case is indeed illegal. See 26 U.S.C.A. § 7201 (West 1997); 26 U.S.C.A. § 7207 (West 1997); see also *United States v. Silk et al. and Harrison v. Greyvan Lines,* 331 U.S. 704 (1947).

The Agreement will lead to violations of federal law in two ways. First, federal law provides that one can not provide the I.R.S. with false or

misleading information. 26 U.S.C.A. § 7207 (West 1997). By forcing Mr. Kruger to file a tax return with a false statement of material fact, his employment status, the contract calls upon the parties to violate this criminal statute. Mr. Kruger could be fined or imprisoned by complying with the terms of the contract. *Id.* Contracts that provide for the parties to commit illegal acts are, as a general rule, unenforceable. *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306 (1985). The general rule applies to this case. More specifically, a contract that purports to alter the employment status of a person is void if entering into such a contract may lead to violation of tax laws. *Jungles*, 903 F.2d at 474. If the decision of the lower court stands, then Mr. Kruger will be forced to choose between violating federal law or violating a court ordered injunction.

Second, a rational jury could reasonably conclude that S.R.I., by initiating and entering into the Agreement, has committed an "affirmative act" of tax evasion sufficient to support a felony conviction under 26 U.S.C.A. § 7201 (West 1997). In such a situation, the contract is void. *Jungles* , 903

U.S. at 474. As a matter of law, the Agreement should have been ruled unenforceable by the appellate court. *Id.*

II. A DISTRICT COURT MAY NOT GRANT A MOTION FOR SUMMARY JUDGMENT WHEN THERE IS A DISPUTED MATERIAL FACT.

Summary judgment shall only be granted if the record, taken as a whole, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56. On a motion to dismiss a claim, the reviewing court must view the facts in the light most favorable to the non-movant party. *Summit Heath, Ltd. v. Pinhas,* 500 U.S. 332, 325 (1991).

Whether or not the Krugers were forced through duress to sign the contract is a fact question. The appellate court felt that the Krugers had not submitted enough evidence to show they were under

duress. The district court ignored the duress defense raised by the Krugers. The Krugers should not have had to prove the point by substantial evidence. See Fed R. Civ. P. 56(e). The Krugers merely needed to show some evidence that the fact issue was contested--which they did in their response to S.R.I.'s motion for summary judgment. Furthermore, the facts admitted by S.R.I., without more, support a finding of duress: S.R.I. admitted that they had not given Mr. Kruger his final paychecks, even though they were aware of Mr. Kruger's severe financial condition. Looking at that fact "in the light most favorable" to the Krugers, they certainly could have been under duress. "In the light most favorable," S.R.I. wrongfully withheld the Krugers' paychecks, knowing that the Krugers were extremely desperate for the money. As a result, the Krugers' felt they had no choice but to sign. The lower courts erred by deciding that the Krugers were not under duress. The issue should have been submitted to a finder of fact.

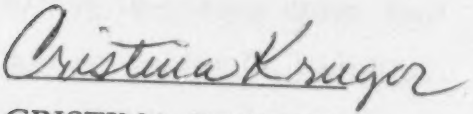
CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,



MANFRED KRUGER



CRISTINA KRUGER

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT DATED JANUARY 7, 1997.

SONIC RESTAURANTS, INC.,
Plaintiff-Appellee,

v.

MANFRED KRUGER;
CHRISTINA KRUGER,
Defendants-Appellants.

No. 96-6193
(D.C. No. CIV-95-796)
(W. D. Okla.)
Filed Jan. 7, 1997

ORDER AND JUDGMENT[1]

Before PORFILIO, BALDOCK. and HENRY, Circuit Judges.

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[1] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a.); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Defendants Manfred and Cristina [sic] Kruger appeal from the entry of summary judgment holding them in breach of the parties' "Termination of Independent Contractor Services and Release of Claims" (termination agreement), awarding plaintiff Sonic Restaurants, Inc. (Sonic.) compensatory damages, and enjoining future violations of the termination agreement. The district court relied on a lengthy list of undisputed facts to uphold the validity of the termination agreement, determine defendants' breach thereof, and grant appropriate relief. Upon de novo review, Kaul v. Stephan., 83 F.3d 1208, 1212 (10th Cir. 1996), we affirm for substantially the reasons stated in the district court's orders of March 22 and May 29, 1996.

Most of the objections broadly stated in defendants' appellate brief "lack even rudimentary substantiation in factual argument and legal authority." Washington v. Department of Transp., 84 F.3d 1222, 1223 (10th Cir. 1996). We shall therefore limit our discussion to the "discernible questions" raised regarding lack of consideration, execution of the agreement under duress, and procedural error on summary judgment. See id.

Defendants contend they were entitled to keep $15,000 in advances made before the parties severed their relationship and, hence, plaintiffs "forgiveness" of this outstanding "debt" in the termination agreement did not constitute valid consideration. This argument rests on an insupportable premise. The $15,000 had been a matter of dispute between the parties--a dispute acknowledged and settled by the very agreement defendants now attack by reassuming their adversarial pre-agreement position. Countenancing such a challenge, by which defendants seek to nullify a negotiated compromise essentially by reneging on it, would effectively destabilize any agreement intended to settle disputed

obligations. Further, and in any event, defendants do not adequately support their underlying position regarding the $15,000 with evidence, argument, and legal authority.

Defendants also attack the termination agreement on the ground that Manfred Kruger was under extreme duress at the time of its execution. However, defendants fail to cite any evidence in the record to substantiate this conclusory claim. Their reference to an affidavit executed months after the district court's decision is patently improper, see Aero-Medical, Inc. v. United States, 23 F.3d 328, 329 n.2 (10th Cir. 1991); Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1549 n.1 (10th Cir. 1992,), and we will not sift through the record searching for other, competent evidence to bolster their unsupported assertions of error, see Harolds Stores, Inc. v. Dillard Dep't Stores, Inc., 82 P.3d 1533, 1540 n.3 (10th Cir.), cert. denied, 117 S. Ct. 297 (1996).

Finally, defendants contend that the district court improperly adopted plaintiff's statement of undisputed facts. However, all we are told is that the seventeen facts in question "are contradicted by the

Defendants' evidence Filed in motions and 180 exhibits of evidence, like W-2's and payroll check stubs; statements of witnesses and other documents relating, to the employee status of Manfred Kruger; relating to the circumstances of the signing of the Termination Agreement of May 2, 199[5]; and the overall deception of [Sonic] with this Termination Agreement and in this Termination Agreement of May 2, 1995." Appellants' Opening Brief at 11. This catch-all record reference is plainly inadequate from a procedural/evidentiary standpoint, see S.E.C. v. Thomas, 965 F.2d 825, 827 (10th Cir. 1992), and, more fundamentally, fails to provide this court with specific, reasoned challenges to the various material facts relied on by the district court. The only particular fact implicated by the reference concerns Manfred Kruger's employment status, which actually was never determined in--indeed, was irrelevant to--the district court's disposition. Rather, the court merely recited the undeniable facts that defendants (1) conceded Mr. Kruger's status as an independent contractor in the termination agreement, and (2) later took action contrary to this concession. To the extent

defendants seek to attack the termination agreement by recanting this concession and resurrecting the employment-status dispute, they run afoul of the same principle discussed above in connection with the advances. One may not nullify an otherwise proper settlement by rearguing the merits of claims expressly resolved therein.

We have considered all of defendants' arguments and, whether explicitly addressed or tacitly reelected, each has been found to lack merit. Accordingly, the judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED. Defendants' motion to supplement the record is denied. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Circuit Judge

APPENDIX B
JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA FILED MAY 29, 1996.

SONIC RESTAURANTS, INC.,

Plaintiff

vs.

No. CIV-95-796-C

Filed May 29, 1996

MANFRED KRUGER and
CHRISTINA KRUGER,

Defendants

JUDGMENT

Upon consideration of the pleadings herein, the Court enters judgment in favor of the plaintiff and against the defendants.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff is awarded declaratory judgment against defendants Manfred Kruger and Cristina [sic] Kruger that the written agreement dated May 2, 1995, and entitled "Termination of Independent

Contractor Services and Release of Claims" (Exhibit A hereto) and the releases contained there are valid, enforceable, and binding.

2. Plaintiff is awarded a money Judgment in the amount of $35,485.63 (exclusive of attorney fees and costs).

3. Defendants are permanently and forever enjoined and prohibited from taking any action which violates the terms and conditions of the Termination Agreement.

4. Defendants are permanently and forever enjoined and prohibited from causing or contributing to causing another person or entity from taking any action which violates the terms and conditions of the Termination Agreement.

5. Defendants are specifically enjoined and prohibited from engaging in the following acts in violation of the Termination Agreement:

a. Claiming in any manner to have been an employee of plaintiff.

b. Filing or otherwise initiating any proceedings in which they claim to have been employees of plaintiff, included as such prohibited

proceedings are unemployment and workers' compensation proceedings;

c. Contacting personnel of plaintiff, its partners and employees of its partnerships to discuss the business activities of plaintiff, the operation of plaintiff's restaurants and/or defendants' previous business relationship with plaintiff;

d. Discussing with any third party the operation of plaintiff's restaurants or plaintiff's business activities,

e. Suggesting or alleging to any person, entity, agency, or tribunal any labor or health violations at any of plaintiff's restaurants;

f. Contacting the media concerning plaintiff, its affiliated entities, partnerships partners, and employees; and

g. Attempting to persuade any teamster union to picket or attempt to unionize plaintiff's partnership restaurants.

6. Defendant Manfred Kruger is specifically enjoined and prohibited from engaging In

the following acts in violation of the Termination Agreement:

a. Contesting in any manner his former status as an independent contractor of plaintiff;

7. Violation of this permanent injunction may be punished as contempt of Court.

DATED this 25th day of May, 1996.

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE
ENTERED IN JUDGEMENT DOCKET ON
May 29, 1996.

EXHIBIT A -- Termination Agreement

TERMINATION OF INDEPENDENT
CONTRACTOR SERVICES
AND RELEASE OF CLAIMS

THIS AGREEMENT is made and entered into this 2nd day of May, 1995 by and between Manfred Kruger, ("M. Kruger") and his wife Cristina [sic]

Kruger ("C. Kruger"), who reside at 3900 Langdon, Greensboro, North Carolina 27410 (jointly and separately referred to as "the Krugers"), and Sonic Restaurants, Inc. ("SRI"), an Oklahoma Corporation with its principle offices at 101 Park Avenue, 14th Floor, Oklahoma City, Oklahoma 73102.

WITNESSETH:

WHERE AS, prior to April 23, 1995, SRI had contracted with M. Kruger as an independent contractor, to supervise certain of SRI's partnership Sonic Drive-Ins in North Carolina and Virginia;

WHERE AS, a dispute has arisen between SRI and M. Kruger concerning the repayment of certain advances taken by M. Kruger which total approximately $15,000.00;

WHERE AS, C. Kruger alleges that M Kruger hired her as an employee at one of SRI's partnership Sonic Drive-Ins and that while employed at the

drive-in she suffered lifting injuries which she claims caused her to suffer a miscarriage and hernia;

WHERE AS, a dispute has arisen concerning her as an employee of this Stanleyville Sonic Drive-In for her alleged work-related injuries; and

WHERE AS, M. Kruger, C. Kruger and SRI desire to settle their disputes and claims against on [sic] another on the terms and conditions

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto as follows:

1. Independent Contractor Status. M. Kruger acknowledges that he performed all of his services rendered to SRI and SRI's partnership Sonic Drive-In restaurants as an independent contractor and that he was not an employee of SRI or SRI Partnership Sonic Drive-In restaurants, Furthermore, M. Kruger agrees

that he will not contest his status as an independent contractor and, therefore, will not now or later claim that he was an employee of SRI, any entity affiliated with SRI, or any SRI partnership's [sic]. Therefore, M. Kruger agrees not to file any worker's compensation or unemployment claims or otherwise allege that he was an employee of SRI or any of SRI's Drive-In partnerships. M. Kruger agrees and acknowledges that he was not at any time a partner in any SRI Sonic Drive-In partnership.

2. Advances. SRI contends that M. Kruger made certain advances to himself from SRI's partnership Sonic Drive-In restaurants totaling approximately $15,000.00. M. Kruger contends that most, if not all of these advances were authorized, that they were intended to reimburse him for travel and other expenses related to the performance of his duties, and that crediting him with payments he owes less than $15,000.00.

3. Contractor Fees. M. Kruger claims and SRI agrees that M. Kruger has not been paid his monthly

contractor's fees of $5,500.00 for March and April, 1995. However, in consideration of the Krugers' willingness to sign the releases contained in this agreement, SRI agrees to immediately pay M. Kruger $5,500.00 for March's fees, pay M. Kruger $5,500.00 on or before June 1, 1995, $5,500.00 for April's fees, and forgive the entirety of the unpaid balance of the advances taken by M. Kruger which total approximately $15,000.00.

4. Taxes. In accordance with M. Kruger's status as an independent contractor, SRI will send M. Kruger at the appropriate time a 1099 Form instead of a W-2 form. M. Kruger agrecs to pay any and all self-employment taxes related to his contractor fees and any other sums paid to him.

5. Travel and Expenses. M. Kruger agrees and acknowledges that he has been reimbursed for any and all travel and other expenses directly or indirectly related to his services as an independent contractor and that such reimbursement occurred through the advances which he took and received.

6. Confidentiality. In consideration of SRI's willingness to pay M. Kruger the balance of $11,000.00 in contractor's fees and SRI's willingness to forgive the entirety of M Kruger's advances, the Krugers shall keep this Agreement strictly confidential at all times and shall not initiate nor maintain any communication with any present or former management or hourly employees of SRI's partnership Sonic Drive-In restaurants nor any partners of the partnerships of such drive-ins. In this respect the Krugers shall not discuss with anyone the particulars of any operations of SRI or SRI's partnership Sonic Drive-in restaurants. Similarly, the Krugers not contact anyone suggesting or alleging that any labor or health violations occurred or exist at any of SRI's partnership Sonic Drive-In restaurants. Furthermore, the Krugers will not counsel anyone else to do that which they have agreed not to do in this Agreement. The Krugers agree and understand that these prohibitions against contact include all forms of oral or written communication, including face-to-face meetings, telephone calls, and written

correspondence. In addition to the foregoing. the Krugers shall not contact, nor encourage anyone else to contact the media about SRI, any SRI affiliated entities, or SRI's partnership Sonic Drive-In restaurants, or their partners or employees. The media includes newspapers and radio and television stations. The Krugers are not to use indirect means to circumvent the restrictions imposed by this paragraph and this Agreement. C. Kruger agrees and acknowledges that she is directly benefitted, economically and otherwise, by SRI's willingness to pay the fees and forgive the indebtedness.

7. Teamsters. The Krugers agree to discontinue all efforts to persuade any teamster union to picket or otherwise attempt to unionize any of SRI's partnership Sonic Drive-In restaurants or any other Sonic Drive-In. The Krugers agree to notify, the teamsters unions which they previously contacted that all disputes have been resolved.

8. No Employee Status. C. Kruger agrees and acknowledges that although M. Kruger reportedly

employed her at the Stanleyville Sonic Drive-In on October 21-24, 1994, that she was M. Kruger's employee and that she was not an employee of the drive-in. Therefore, C. Kruger agrees not to file any worker's compensation or unemployment claims or otherwise allege that she was an employee of the Stanleyville Sonic drive-in.

9. Release by the Krugers. In consideration of SRI's willingness to pay the balance of $11,000.00 in fees to M. Kruger and SRI's willingness to forgive the advances taken by M. Kruger, the Krugers hereby forever release and discharge SRI, Sonic Corp., Sonic Industries Inc., Sonic Service Corp., and their respective officers, directors employees, and agents, and SRI's partnerships and their respective partners, employees, and agents (which partnerships include those for the Sonic Drive-Ins of Asheboro, Eden, Mt. Airy, N. Wilksboro, Stanleyville, Greensboro, Winston-Salem (Silas Creek), and Clemmons, North Carolina and Galax and Tazewell, Virginia) from any and all claims and demands, at law and in equity, known and unknown. The released claims and

demands include those which directly or indirectly are related to or arise from any claim by M. Kruger for any further independent contractor fees beyond the $11,000.00 total which SRI has agreed to pay for March and April, 1995, wrongful discharge as an independent contractor or as an employee, travel and other expenses related to M. Kruger's services rendered to SRI and SRI's partnership Sonic Drive-In restaurants, any and all worker's compensation and unemployment claims by M. Kruger and C. Kruger, any and all wages by M. Kruger and C. Kruger, and any and all miscarriage and hernia related claims by C. Kruger and M. Kruger, including bodily injuries, disabilities, medical and rehabilitation expenses, mental anguish, pain and suffering, and loss of consortium, as well as all future claims and demands related to the miscarriage and hernia. If any entity, agency, authority, or person later claims or determines that M. Kruger or C. Kruger, as the case might be, hereby forever releases and discharges such employer and the employer's officers, directors, employees, agents, partnerships and their affiliates, and all persons acting on behalf of any of them, from

all claims and causes of action, at law or in equity, known and unknown, including, but not limited to claims of discrimination based on such grounds as sex, race national origin [sic], disability, religion, citizenship, and age, wrongful discharge, and breach of contract, which may have accrued in favor of M. Kruger or C. Kruger as of the date of this Agreement.

10. SRI's Release. SRI, on behalf of itself and all of the parties released in the preceding paragraph, hereby forever releases and discharges the Krugers from any and all claims and demands, at law or in equity, known or unknown. The released claims and demands include those which directly or indirectly are related to or arise from M. Kruger's contractor services rendered to SRI and SRI's partnership Sonic Drive-In restaurants and M. Kruger's retention of advances totaling approximately $15,000.00.

11. Mutual Releases. All parties to this Agreement agree and acknowledge that the releases contained herein are mutual and that if any release if void or ineffective, that the other parties to this

Agreement may treat their releases as equally void or ineffective. The purpose of this paragraph is to ensure that all the parties are restored to their status quo positions before this Agreement was entered into, if any release is later deemed to be void or ineffective.

12. Liquidated Damages. If M. Kruger or C. Kruger breaches the terms of this Agreement, SRI shall have a claim against each and both of them for $11,000 00, plus all advances to M. Kruger (less all payments previously made by M. Kruger), as liquidated damages, not as a penalty, for such breach. Furthermore, all parties damaged by any such breach by the Krugers shall be entitled to receive from the Krugers any and all actual, special and consequential damages caused by their breach and shall be entitled to receive reasonable attorneys fees, costs and expenses related to enforcing this Agreement the Krugers. Furthermore, SRI shall have the right on behalf of itself and other parties released by the Krugers to seek injunctive relief without having to post a bond, to prevent M. Kruger and C. Kruger

from breaching the terms and conditions of this Agreement.

13. Books, Records, and Equipment. The Krugers shall return immediately to SRI in good condition, less normal wear and tear, any and all books, records, and equipment belonging to or leased by SRI or any of SRI's partnership Sonic Drive-In restaurants. Furthermore, the Krugers shall not use any information contained in such books and records to the detriment of SRI and SRI's partnership Sonic Drive-In restaurants, shall not to make or retain copies of any such books and records, and not release any such books and records to others without SRI's advance written consent, and should not disclose to others any information which either of them obtained or learned about SRI and SRI's partnership Sonic Drive-In restaurants while M. performed his contractor duties.

14. Waiver. The failure of a party to insist in any one or more instance on the performance of any term or condition of this Agreement shall not

operate as a waiver of any future performance of that term or condition.

15. Governing Law. Notwithstanding the place where the parties execute this Agreement, the internal laws of Oklahoma shall govern the construction of the terms and the application of the provisions of this Agreement. The federal and state courts in Oklahoma County, Oklahoma shall constitute the proper venue and forum for any action arising out of or in any way related to this Agreement. Each party to this Agreement hereby consents to any of those court's exercise of personal jurisdiction over the party in that type of action and expressly waives all objections the party otherwise might have to that exercise of personal jurisdiction.

16. Headings. The headings used in this Agreement appear strictly for the parties' convenience in identifying the provisions of this Agreement and shall not affect the construction or interpretation of the provisions of this Agreement.

17. Binding Effect. This Agreement binds and inures to the benefit of the parties and their respective successors, legal representatives, heirs and permitted assigns.

18. Amendments. No amendments to this Agreement shall become effective or binding on the parties, unless agreed to in writing by all of the parties.

19. Notice. Except as otherwise provided in this Agreement, when this Agreement makes provision for notice or concurrence of any kind, the binding party shall deliver or address the notice to the other party by certified mail or hand delivery via a nationally-recognized overnight delivery service, charges prepaid and properly addressed, to the following address or by telecopy to the following telecopy number:

M. Kruger: 3900 Langdon
Greensboro, North Carolina 27410
Telecopy Number: (910) 352-4349

C. Kruger: 3900 Langdon
Greensboro, North Carolina 27410
Telecopy Number: (910) 352-4349

SRI: 101 Park Avenue
Oklahoma City, Oklahoma 73102
Telecopy Number: (405) 280-7694

All notices pursuant to the provisions of this Agreement shall run from the date that the other party receives the notice or three business days after the party places the notice in the United States mail. Each party may change the party's address by giving written notice to the other party.

Executed as of the day and year first set forth above.

SRI: Sonic Restaurants, Inc.
By: /s/ Frank Young
(Vice) President

M. Kruger: /s/ Manfred Kruger

C. Kruger: /s/ Christina [sic] Kruger

APPENDIX C -- ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA DATED MAY 29, 1996.

SONIC RESTAURANTS, INC.,

Plaintiff No. CIV-95-796-C

vs.

MANFRED KRUGER and CHRISTINA KRUGER

Filed May 29, 1996

Defendants

ORDER

Plaintiff and defendants executed a written agreement entitled "Termination of Independent Contract Services and Release of Claim" (the "Termination Agreement"). On March 22, 1996, the Court granted partial summary judgment in favor of the plaintiff and against the defendants finding that, (1) the Termination Agreement and Releases contained therein are valid, binding, and enforceable; (2) defendants have materially breached the Termination Agreement; and (3) plaintiff is entitled

to monetary and injunctive relief. As recognized in the March 22, 1996, Order, the amount and type of remedy to which plaintiff was entitled could not be determined based on the evidence then before the Court. That is, although the Court found in plaintiff's favor on the issue of the viability of the Termination Agreement, to compute the damages the Court required evidence of plaintiffs actual damages. Additionally, plaintiff was directed to supply the parameters of the injunctive relief, On April 12, 1996, plaintiff filed a motion requesting an award of money damages and the entry of a permanent injunction. Defendants have failed to respond. On April 19 1996, defendant filed a notice of appeal of the Court's March 22, 1996, Order.

Local Rule 7.1(e) provides that for failure to respond, a motion may be deemed confessed. As noted above, defendants have not filed a response and have not requested or been granted an extension of time in which to respond. Clearly, defendants' April 19, 1996, Notice of Appeal is premature because the Court's March 22, 1996, Order addressed only plaintiff's motion for partial summary judgment, did

not contain an expression that there was no just reason for delay, and did not direct the entry of judgment. Fed. R. Civ. P. 54(b), Fed. R. App. P. 4(a); In re Chateuagay Corp., 922 F.2d 86 (2nd Cir. 1990). As set out in the Court's March 22, 1996, Order, there remained for resolution the issue of plaintiffs request for money damages and for an injunction. Any notice of appeal filed before this Court has either entered a final judgment, or made the certification noted above, is a nullity. A. O. Smith Corp. v. Sims Consol. Ltd., 647 F.2d 118 (10th Cir. 1981). In such a situation, the appellate court lacks jurisdiction. See generally McLauglhlin v. City of LaGrange, 662 F.2d 1385 (11th Cir. 1981): rehearing denied, 668 F.2d 536 (11th Cir. 1982), cert. denied, 456 U.S. 979 (1982); Beukema's Petroleum Co. v. Admiral Petroleum Co., 613 F.2d 626 (6th Cir. 1979) Thus, for the unopposed reasons set forth in plaintiff's motion, and for defendants failure to respond the Court, in its discretion and as permitted by LR7.l(e), finds that plaintiff's motion shall be granted.

IT IS THEREFORE ORDERED that plaintiff's request for money judgment and injunctive relief

is hereby granted Plaintiff is awarded the sum of $35,385.63 (exclusive of attorney's fees and costs.) A judgments shall enter that reflects this award and the specifics of the injunctive relief.

IT IS SO ORDERED this 29th day of May, 1996.

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE
ENTERED IN JUDGMENT DOCKET ON
May 29, 1996

APPENDIX D

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA DATED MARCH 22, 1996.

SONIC RESTAURANTS, INC., Plaintiff

vs.

MANFRED KRUGER and CHRISTINA KRUGER, Defendants

No. CIV-95-796-C

Filed March 22, 1996

MEMORANDUM OPINION AND ORDER

Plaintiff, Sonic Restaurants, Inc. ("Sonic"), brings this action to determine whether the parties Termination Agreement and release is valid. Plaintiff also seeks recovery of certain monies as a result of defendants' breach of the Termination Agreement. This case is now before the Court for consideration of plaintiff s motion for summary judgment filed on February 1, 1996. Although styled as a "Motion to Strike Plaintiff's Motion for

Summary Judgment," defendants' responsive pleading fully addressed all issues raised in Sonic's motion, including arguments and evidence in opposition to the motion. See Defendants' Motion to Strike Plaintiffs Motion for Summary Judgment (Feb. 8, 1996). The Court denies the motion to strike as no cause has been shown therefor and will treat defendants' motion to strike as a response to the motion for summary judgment. On February 21, 1996, plaintiff filed a reply to defendant's motion to strike. On March 8, 1996, defendants filed a "Reply to Plaintiffs Reply of February 21, 1996."

Local Rule 56.1 provides the framework to be followed in connection with a motion for summary judgment. Accordingly, the following facts are not in dispute.

1. Sonic, Manfred Kruger, and Christina [sic] Kruger executed a written agreement dated May 2, 1995, entitled 'Termination of Independent Contractor Services and Release of Claims' (the "Termination Agreement').

2. Manfred and Christina [sic] Kruger were given the opportunity to review, discuss, consider,

and negotiate the terms and provisions of the Termination Agreement prior to its execution.

3. Neither Manfred nor Christina [sic] Kruger expressed any disagreement with the terms and provisions of the Termination Agreement prior to its execution. Neither Manfred nor Christina [sic] Kruger expressed to Sonic any reluctance in executing the Termination Agreement. Neither Manfred nor Christina [sic] Kruger requested additional time from Sonic to review, discuss, and consider the terms and provisions of the Termination Agreement prior to its execution.

4. Mr. Kruger made demands and threats of legal action to Sonic after the termination of his relationship with Sonic and prior to execution of the Termination Agreement. The Termination Agreement recites that various disputes had arisen between the Krugers and Sonic prior to execution of the Termination Agreement and such disputes included, inter alia, (1) repayment of advances of $15,000.00 previously taken by Manfred Kruger; (b) personal injuries allegedly suffered by Christina [sic] Kruger and (c) the employment status of the Krugers.

5. The Termination Agreement contains Manfred Kruger's acknowledgment that he was an independent contractor, not an employee, of Sonic. The Termination Agreement also contains Christina [sic] Kruger's acknowledgment that she was not an employee.

6. The Krugers promised to keep the terms of the Termination Agreement confidential.

7. The Krugers promised to refrain from: (a) contesting Mr. Kruger's status as an independent contractor; (b) filing unemployment or workers' compensation claims and alleging to be Sonic employees; (c) contacting personnel of Sonic, its partners and employees of Sonic's partnerships; (d) discussing with third parties the operation of Sonic's restaurants; (e) suggesting or alleging any labor or health violations at any of Sonic's restaurants; (f) contacting the media concerning Sonic, its affiliated entities, partnerships, partners, and employees; and (g) attempting to persuade any teamster union to picket or attempt to unionize Sonic's partnership restaurants.

8. Sonic and the Krugers exchanged comprehensive mutual releases of all claims in the Termination Agreement.

9. Sonic and the Krugers agreed that the Termination Agreement binds and inures to their benefit and that of their respective successors, legal representatives, heirs, and permitted assigns.

10. In the course of Manfred Krugers pre-Termination Agreement demands and threats of legal action, he advised Sonic that he had consulted with legal counsel concerning his rights and legal remedies against Sonic. Manfred Kruger told Sonic that he had been referred to a "law company" on April 27, 1995, that specializes in labor disputes and on-the-job injuries. According to Manfred Kruger, the lawyers advised him of several legal remedies concerning his compensation, tax responsibility, travel expenses, and personal injures of Manfred and Christina [sic] Kruger. Manfred Kruger demanded payment from Sonic by May 4, 1995, and stated that, if payment was not made within that time frame, he would instruct the lawyers to start legal action and he would start "other actions' against Sonic (including,

but not limited to, contacting public health authorities, the Department of Labor, teamster unions).

11. On May 2, 1995, the Krugers and Sonic executed the Termination Agreement and Sonic delivered payment of $11,000.00 to Manfred and Christina [sic] Kruger in accordance with the terms and provisions of the Termination Agreement.

12. In accordance with the terms and provisions of the Termination Agreement, Sonic relinquished its right to pursue the recovery from Manfred Kruger of approximately $15,000.00 in allegedly unauthorized advances taken by Manfred Kruger.

13. On or about May 21, 1995, Manfred and Christina [sic] Kruger notified Sonic that they considered the Termination Agreement to be "null and void."

14. Manfred Kruger has contested his status as an independent contractor of Sonic, contrary to the terms and provisions of the Termination Agreement.

15. Manfred Kruger has filed an unemployment claim with the North Carolina Employment Security Commission ("NCESC'), contrary to the terms and provisions of the Termination Agreement.

16. Manfred Kruger has filed a workers' compensation claim, contrary to the terms and provisions of the Termination Agreement. He has also contacted the U.S. Department of Labor concerning Sonic's business activities and operation of restaurants contrary to the terms and provisions of the Termination Agreement.

17. The Termination Agreement provides for liquidated damages and injunctive relief in the event the Krugers breach the Termination Agreement. The liquidated damages include: (a) the $11,000.00 in contractor fees paid by Sonic to the Krugers' (b) the $15,000.00 in advances taken by Manfred Kruger; (c) all actual, special, and consequential damages caused by the Krugers' breach; and (d) reasonable attorney fees, costs, and expenses incurred by Sonic in enforcing the Termination Agreement.

Validity of the Termination Agreement and Release

Because the language of the Termination Agreement and release is an unambiguous contract, its terms will be enforced as a matter of law. Fisher v. Owens Comina Fiberglass Corp., 868 F.2d 1175, 1176 (10th Cir. 1989). Evidence in the record establishes that the defendants could read and comprehend the Termination Agreement and release. The defendants were given the opportunity to review, discuss, consider, and negotiate the Termination Agreement's terms and provisions. Moreover, defendants expressed no disagreement with the terms in the documents and did not request additional time to review and consider the documents. Defendants argue these documents must be determined invalid, based on the evidence and the case law; however, the Court is convinced otherwise. See discussion by the Tenth Circuit in Torrez v. Public Service Co. of New Mexico, Inc., 908 F.2d 687, 689-690 (10th Cir.1990) (factors to be considered when a court is called on to determine the validity of a release: clarity and specificity of the language, party's education and business experience, amount of time party had for deliberation about the release before

signing it, whether party knew or should have known his rights upon execution of the release, whether party was encouraged or in fact received benefit of counsel, whether there was an opportunity for negotiation of the terms of the agreement, and whether the consideration exchanged for the release exceeds the benefits to which the party was already entitled). The language in the documents is clear and specific. Defendants have not alleged the contract violates public policy. Accordingly, Sonic is entitled to judgment on its claims that the Termination Agreement and release are valid.

Release of Claims

In Sonic's first proposition, it urges the Court to find that litigation of defendants' counterclaims in this action are prohibited by the Termination Agreement and release. By order dated February 16, 1996, the Court dismissed defendants' counterclaims. Therefore, this proposition is now moot.

Defendants' Breach of the Termination Agreement

It is undisputed that defendants have committed acts prohibited by the Termination Agreement and, in light of defendants' activities, the Court concludes

defendants have breached the Termination Agreement and thus plaintiff is entitled to recover. Accordingly, Sonic is entitled to judgment on its claim that defendants have breached the Termination Agreement.

Remedy

Provisions in the Termination Agreement deal with the consequences should the Termination Agreement be breached. In addition to liquidated damages, the agreement refers to actual damages, attorney fees, costs, and an injunction to prohibit additional breaches. Plaintiffs evidence regarding the amount or type of actual damages presents a claim for $26,000 in liquidated damages ($11,000 contractor fees and $15,000 in forgiven advances) and injunctive relief, attorney fees, and costs. However, the total relief requested and formation of any injunctive relief do not appear capable of accurate calculation. See First Amended Complaint, ¶ C of Prayer ("Money damages in an amount adequate to compensate Plaintiff for all damage directly caused by Defendants' anticipatory repudiation and material breach of the written agreement entitled

'Termination of Independent Contractor Services and Release of Claims."). The Court will therefore treat plaintiffs motion as one for partial summary judgment and reserve the matter of remedy for further motion or hearing.

Conclusion

IT IS THEREFORE ORDERED that the motion for summary judgment filed on behalf of plaintiff, Sonic Restaurants, Inc., treated as a motion for partial summary judgment, is hereby GRANTED. There remains for determination the amount of plaintiff's damages and the extent of appropriate injunctive relief. The settlement conference scheduled March 28, 1996, will not be stricken but will be conducted as appropriate to resolve remaining issues. Failing amicable resolution, plaintiff is directed to present either a motion or request for hearing on the appropriate remedy no later than April 12, 1996. The case is stricken from the April trial docket. Plaintiff s motion to bifurcate is moot. A judgment shall enter following determination of appropriate remedy.

IT IS SO ORDERED this 22nd day of March, 1996.

Robin J. Cauthron United States District Judge

Supreme Court, U.S.
FILED
MAY 7 1997
CLERK

No. 96-1586

In The

Supreme Court of the United States

October Term, 1996

MANFRED KRUGER and CRISTINA KRUGER,

Petitioners,

vs.

SONIC RESTAURANTS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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19 pp

QUESTION PRESENTED

Whether this Court will address an issue that was not raised in, or decided by, the district court or the United States Court of Appeals for the Tenth Circuit.

LIST OF INTERESTED PARTIES

The Petitioners are Manfred Kruger and Cristina Kruger.

The Respondent is Sonic Restaurants, Inc. (the caption of Petitioners' Petition inaccurately identifies Respondent as "Sonic Restaurants Inc."). Sonic Restaurant, Inc.'s parent company is Sonic Corp. Sonic Restaurant, Inc.'s affiliate is Sonic Industries Inc. (a separate wholly-owned subsidiary of Sonic Corp.).

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OTHER AUTHORITY:

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent ("Sonic") respectfully submits its Brief in Opposition to the Petition for Writ of Certiorari filed by the Petitioners (the "Krugers"). As is discussed in greater detail *infra*, Sonic respectfully requests that the Court deny the Krugers' Petition which seeks review of an opinion of the United States Court of Appeals for the Tenth Circuit (Case No. 96-6193, Order and Judgment filed January 7, 1997).[1]

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below.

The Krugers' Petition arises from the Tenth Circuit's opinion affirming the district court's entry of summary judgment in favor of Sonic and against the Krugers. The following brief summary of the factual background of this matter is presented to illustrate that "compelling reasons" necessary to support a writ of certiorari are not present.

Sonic initiated the action in the district court based on an unambiguous written agreement between Sonic and the Krugers. Sonic is involved in the retail food

[1] For the convenience of the Court and ease of reference, all citations to the Tenth Circuit's Opinion are to the Opinion attached as Appendix "A" to the Krugers' Petition [e.g., "Petition, App. A, p. ___"].

service industry. Manfred and Cristina Kruger are husband and wife. Mr. Kruger was an independent contractor of Sonic. Business differences arose between Mr. Kruger and Sonic. Sonic and Mr. Kruger terminated their business relationship and executed a written agreement entitled "Termination of Independent Contractor Services and Release of Claims" (the "Termination Agreement").

The Krugers received valuable benefits from Sonic under the Termination Agreement including, but not limited to, cash payments totalling $11,000.00 and forgiveness of a disputed amount of $15,000.00 allegedly owed by Mr. Kruger to Sonic. The Krugers made contractual commitments to Sonic in the Termination Agreement. The Krugers' commitments included, but were not limited to, a comprehensive release in favor of Sonic and acknowledgment of Mr. Kruger's previous status as an independent contractor.

The Krugers readily accepted the benefits of Sonic's performance under the Termination Agreement, then blatantly renounced their own contractual commitments to Sonic. Less than a month after signing the Termination Agreement and receiving payment from Sonic, the Krugers notified Sonic that they considered the Termination Agreement to be null and void. Sonic then filed the action in the district court to obtain a judicial determination of the parties' legal relationship and status, including the validity of the Termination Agreement and release. Sonic also sought to recover money damages associated with the Krugers' breach of the Termination Agreement and injunctive relief prohibiting future breaches by the Krugers, all as expressly provided for in the Termination

Agreement. The Krugers' attempts to assert various counterclaims against Sonic were dismissed by the district court.

Sonic asked the district court to determine whether the Termination Agreement was valid and binding on the parties. The district court granted Sonic's motion for summary judgment, finding that the Termination Agreement and accompanying release were valid and that the Krugers had breached the Termination Agreement in a manner that entitled Sonic to recover money damages and injunctive relief.

The Krugers appealed the district court's decision to the Tenth Circuit Court of Appeals. The Tenth Circuit affirmed the district court's decision, finding that all of the Krugers' arguments lacked merit. *See*, Petition, App. A, p. 6a.

B. Correction of Misstatements in the Petition.

The Tenth Circuit's opinion correctly summarizes the facts of this case. The opinion focuses on the issue of whether the district court, based on the record before it, correctly granted summary judgment to Sonic and found the Termination Agreement valid and enforceable. Pursuant to United States Supreme Court Rule 15.1, Sonic addresses the following misstatements contained in the Krugers' Petition.

The Tenth Circuit's opinion correctly concludes that Mr. Kruger's work status (independent contractor or employee) is irrelevant to the issues presented for review. For this reason, the Krugers' numerous misstatements

concerning their alleged employment with Sonic are not addressed by this Brief in Opposition. The Krugers' misstatements concerning the circumstances surrounding execution of the Termination Agreement are addressed as follows.

The Termination Agreement was the result of numerous demands and threats of legal action made by Mr. Kruger after Sonic terminated his role as an independent contractor. In the course of his pre-Termination Agreement demands and threats, Mr. Kruger advised Sonic that he had consulted with legal counsel concerning his rights and legal remedies against Sonic. Rec., Vol. V, Doc. No. 47 [Part II, ¶10 (p. 4)].[2] The Krugers and Sonic ultimately agreed to resolve their differences and executed the Termination Agreement.

The Krugers were given the opportunity to review, discuss, consider and negotiate the terms and provisions of the Termination Agreement prior to its execution. Rec., Vol. V, Doc. No. 47 [Part II, ¶2 (p. 3)]. The Krugers did not express to Sonic any disagreement with or reluctance in executing the Termination Agreement. The Krugers did not request additional time from Sonic to review, discuss and consider the terms and provisions of the Termination Agreement prior to its execution. Rec., Vol. V, Doc. No. 47 [Part II, ¶3 (p. 3)].

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[2] Reference is made to the record on appeal as presented to the Tenth Circuit (by volume and the district court's docket sheet number).

The Krugers mischaracterize the nature and content of the Termination Agreement.[3] The Krugers erroneously identify the "main thrust" of the Termination Agreement as characterizing the Krugers' work status as independent contractors. Petition, p. 7. The Krugers ignore the undisputable fact that the Termination Agreement arose directly from Mr. Kruger's repeated threats of legal action against Sonic. The title of the Termination Agreement itself includes the words "Release of Claims". Contrary to the Krugers' contention, the true "main thrust" of the Termination Agreement is the settlement of disputed claims.[4]

C. Facts Showing that the Krugers' Primary Issue Was Not Raised or Addressed Below.

The primary issue purportedly presented by the Krugers' Petition is whether a federal court may enforce a contract which requires the commission of a federal crime. Petition, p. i. The Krugers' Petition erroneously

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[3] For example, the Krugers grossly mischaracterize the liquidated damages provision of the Termination Agreement. The Krugers erroneously state that the Termination Agreement provides for liquidated damages in the event the Krugers file for unemployment or disability benefits. Petition, p. 8. The liquidated damages provision does not even mention unemployment or disability benefits. The liquidated damages provision merely informs the Krugers of the financial consequences of any breach of the Termination Agreement. Petition, App. B (Exhibit "A" thereto), p. 20, ¶12.

[4] The Tenth Circuit opinion characterizes the Termination Agreement as a "negotiated compromise" and an "agreement intended to settle disputed obligations". Petition, App. A, pp. 3a-4a.

states that they argued in the district court that the Termination Agreement forces them to commit a criminal act. Petition, p. 9. The Krugers have not and cannot cite the Court to any presentation of such issue in the record which was before the district court on Sonic's motion for summary judgment.

The Krugers appealed the district court's decision to the Tenth Circuit Court of Appeals. The only three issues presented by the Krugers to the Tenth Circuit were: (1) whether the Termination Agreement is invalid based on lack of consideration; (2) whether the Termination Agreement is invalid based on duress; and (3) whether the district court erred in granting summary judgment to Sonic.[5] The Tenth Circuit affirmed the district court, finding that summary judgment was properly entered in favor of Sonic and rejecting the Krugers' consideration and duress contentions.

The Krugers raise two issues in this Court. The first issue is whether a federal court may enforce a contract which requires the commission of a federal crime (the "crime issue"). The second issue is whether a federal court may grant a motion for summary judgment when there is a disputed material fact (the "summary judgment issue"). The summary judgment issue was raised in, and decided by, the Tenth Circuit. The crime issue was not raised in, or decided by, the Tenth Circuit. This Court's

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[5] The Krugers' presentation of issues for review to the Tenth Circuit are contained in their Opening Brief filed in the Tenth Circuit on July 16, 1996 [p. 5, ¶3(A) (lack of consideration); p. 7, ¶3(B) (duress); p. 12, ¶7 (summary judgment)].

review of the Krugers' Petition should properly be limited to the summary judgment issue.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE KRUGERS' PETITION FAILS TO PRESENT COMPELLING REASONS TO JUSTIFY A WRIT OF CERTIORARI.

Review on a writ of certiorari is not a matter of right and will be granted only for compelling reasons. United States Supreme Court Rule 10. This Court's Rules specifically address considerations governing review on certiorari and indicate the character of "compelling reasons" considered by the Court on a petition for a writ of certiorari. United States Supreme Court Rule 10(a)-(c). The Krugers' Petition fails to present any compelling reasons which justify a writ of certiorari and should be denied.

The Krugers' Petition attempts to present an issue within one of the categories of potential "compelling reasons" recognized by this Court's Rules. United States Supreme Court Rule 10(a) provides that a "compelling reason" which may justify a writ of certiorari includes a situation where "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." United States Supreme Court Rule 10(a). The Krugers' Petition fails to meet this standard in two respects. First, the contract and summary judgment issues addressed and ruled on by the Tenth Circuit do not constitute a sufficiently "important matter" to justify a

writ of certiorari. Second, the Tenth Circuit's decision does not conflict with the Seventh Circuit's decision in *U.S. v. Jungles*, 903 F.2d 468 (7th Cir. 1990).

Certiorari decisions typically involve issues of public importance and uniformity of federal law. *See*, 16B Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 2d* § 4004.1 (1996). Examples of important matters which warrant consideration on certiorari include the constitutionality of a federal statute,[6] constitutionality of a state court injunction which creates a conflict between the state's highest court and a federal appellate court,[7] a question of Sixth Amendment law,[8] and the existence and scope of an aiding and abetting action under a federal securities statute.[9] The issues raised by the Krugers' Petition do not present important matters or compelling reasons for the issuance of a writ of certiorari.

II. THIS COURT SHOULD REFRAIN FROM EXERCISING ITS CERTIORARI JURISDICTION TO CONSIDER THE "CRIME ISSUE" PRESENTED BY THE KRUGER'S PETITION.

As discussed *supra*, the Krugers improperly attempt to present an issue in this Court which they failed to

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[6] *U.S. v. Edge Broadcasting Co.*, 509 U.S. 418, 426, 113 S.Ct. 2696, 2703, 125 L.Ed.2d 345 (1993).

[7] *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 114 S.Ct. 2516, 2523, 129 L.Ed.2d 593 (1994).

[8] *Nichols v. U.S.*, 511 U.S. 738, 114 S.Ct. 1921, 1925, 128 L.Ed.2d 745 (1994).

[9] *Central Bank v. First Interstate Bank*, 511 U.S. 164, 114 S.Ct. 1439, 1444, 128 L.Ed.2d 119 (1994).

present to the district court and Tenth Circuit. An issue that is raised for the first time by a petition for writ of certiorari cannot be considered.[10] The Krugers' failure to present their purported crime issue to the district court and Tenth Circuit should preclude this Court's consideration of such issue in connection with the Krugers' Petition.

III. THE TENTH CIRCUIT'S OPINION DOES NOT CREATE A CONFLICT WITH THE SEVENTH CIRCUIT ON A COMMON ISSUE.

Assuming *arguendo* that the Krugers had first raised their crime issue below, a writ of certiorari would still not be warranted. The Krugers inaccurately contend that the Tenth Circuit's opinion creates a conflict with the Seventh Circuit on the issue of the enforceability of a contract such as the Termination Agreement. The Krugers rely on the Seventh Circuit's decision in *U.S. v. Jungles*. The Krugers' reliance on *Jungles* is misplaced in two respects. First, the issue in *Jungles* is different than that addressed by the Tenth Circuit. Second, *Jungles* does not address the crime issue which the Krugers improperly attempt to raise for the first time in this Court.

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[10] *Gray v. Netherland*, ___ U.S. ___, 116 S.Ct. 2074, 2082, 135 L.Ed. 2d 457 (1996) ("[i]f the claim was not raised or addressed in federal proceedings, below, our usual practice would be to decline to review it"); *U.S. v. Ortiz*, 422 U.S. 891, 898, 95 S.Ct. 2585, 2589, 45 L.Ed.2d 623 (1975). *See also, Oklahoma Tax Commission v. Chickasaw Nation*, ___ U.S. ___, 115 S.Ct. 2214, 2219, 132 L.Ed.2d 400 (1995).

As discussed *supra*, three issues were presented to and addressed by the Tenth Circuit: (a) whether the Termination Agreement is invalid due to a lack of consideration; (b) whether the Termination Agreement is invalid due to duress; and (c) whether the district court erred in granting summary judgment against the Krugers. *Jungles* involved the appeal of a criminal conviction for tax evasion. *Jungles* did not involve the issue of the validity of a contract such as the Termination Agreement. *Jungles* did not involve the issue of whether summary judgment was properly granted. The Krugers' characterization and description of the Seventh Circuit's decision in *Jungles* is substantially and significantly inaccurate. The Krugers erroneously state that the Seventh Circuit in *Jungles* held that a contract similar to the Termination Agreement was void because it could be considered to be evidence of a criminal act. Petition, p. 10.

The Seventh Circuit in *Jungles* affirmed a worker's criminal conviction for failure to file tax returns and tax evasion. The worker in the criminal prosecution had been employed by a family business for fifteen years and, during that time, his employer had withheld taxes from his wages. After fifteen years, the worker decided that he no longer wanted to pay taxes. The worker created and implemented a scheme to conceal his assets and income from the taxing authorities. The worker created and had his employer sign an "Independent Contractor Agreement" which defined the worker as an independent contractor and specified that the employer was no longer required to withhold wages of the worker for federal income tax purposes. The employer testified that, in his opinion, the agreement was a sham and its sole purpose

was to avoid having taxes withheld. The worker also changed the way his weekly paychecks were issued (no longer in his name, but that of a trust). The worker additionally directed his employer to remove his social security number from all tax reports sent by the employer to the Internal Revenue Service. The employer complied with the worker's request and sent a letter to the Internal Revenue Service explaining the reason for its deletion of the workers' social security number.

Not surprisingly, an investigation was initiated and indictments were ultimately issued against the worker for failure to file returns and tax evasion. The worker represented himself at his criminal trial and focused his defense on his alleged status as independent contractor. The worker unsuccessfully contended that the company was the party responsible for payment of taxes, not him. The worker also contended that the independent contractor agreement, as the only evidence of an affirmative act of tax evasion, was insufficient to warrant a conviction.

The worker was convicted in the district court and his conviction was affirmed by the Seventh Circuit. The issues presented by the worker on appeal to the Seventh Circuit were: (a) whether the government's evidence at trial was sufficient to support his conviction for tax evasion; (b) whether various trial court rulings and prosecutorial actions deprived him of a fair trial; and (c) whether his sentence was imposed in violation of his due process rights. 903 F.2d at 472-73.

The worker in *Jungles* did not present, and the Seventh Circuit did not address, issues concerning the contractual validity and enforceability of the independent

contractor agreement created by the worker to implement his tax evasion scheme. The worker in *Jungles* did not present, and the Seventh Circuit did not address, the issue of the worker's employment status. *Jungles* does share one point in common with the Tenth Circuit's opinion. The Seventh Circuit in *Jungles* expressly stated that the worker's status as an employee or independent contractor was "immaterial". 903 F.2d at 476. The Tenth Circuit similarly stated that Mr. Kruger's work status is "irrelevant".[11] Petition, App. A, p. 5a.

The Krugers' reliance on *Jungles* is misplaced. The Tenth Circuit opinion and *Jungles* involve significantly different issues. The Tenth Circuit opinion and *Jungles* do not create a conflict on a common important matter. The Krugers' Petition should properly be denied.

IV. THE KRUGERS' DISAGREEMENT WITH THE DISTRICT COURT'S SUMMARY JUDGMENT DECISION DOES NOT JUSTIFY A WRIT OF CERTIORARI.

The second question presented by the Krugers' Petition is whether a district court may grant a motion for summary judgment when there is a disputed material fact. The Krugers contend that the Tenth Circuit erred in affirming the district court's erroneous factual determination that they were not under duress when they executed the Termination Agreement. Petition, p. 10. The Krugers'

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[11] The Tenth Circuit opinion notes that "Manfred Kruger's employment status, . . . actually was never determined in – indeed, was irrelevant to – the district court's disposition". Petition, App. A, p. 5a.

summary judgment contention ignores the fact that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." United States Supreme Court Rule 10. The Krugers' summary judgment contention concerns factual findings of the district court and should properly be rejected.

Sonic submitted seventeen separate statements of undisputed material facts to the district court as part of its motion for summary judgment. Sonic's undisputed facts were properly supported by reference to evidentiary materials submitted to the district court pursuant to Fed.R.Civ.P. 56. The Krugers' response to Sonic's motion for summary judgment failed to address and rebut any of the seventeen undisputed material facts submitted by Sonic. The district court granted Sonic's motion for summary judgment.

The Krugers appealed to the Tenth Circuit and contended that the district court improperly deprived them of their right to a jury trial and ignored pertinent facts. The Krugers attempted to present materials to the Tenth Circuit that were not presented to the district court. The Tenth Circuit rejected the Krugers' attempt to rely on matters outside of the record[12] and refused to sift through the record in search of evidence to support the Krugers' unsupported contentions on appeal. Petition (App. A), p. 4a.

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[12] For example, the Tenth Circuit rejected the Krugers' attempt to rely on an affidavit executed months after the district court's decision. Petition (App. A), p. 4a.

The Krugers' summary judgment issue is insufficient to justify granting a petition for certiorari. The Krugers' Petition should properly be denied.

CONCLUSION

Based on the foregoing reasons, Respondent, Sonic Restaurants, Inc., respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: May 7, 1997

Respectfully submitted,

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Supreme Court, U.S.
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(3)

In The
Supreme Court of the United States

October Term, 1996

MANFRED KRUGER and
CRISTINA KRUGER,
Petitioners,

vs.

SONIC RESTAURANTS, INC.,
Respondent

On Petition For A Writ Of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MANFRED KRUGER and
CRISTINA KRUGER
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Plano, TX 75075
(972) 867-9310
Petitioners *pro se*

15 pp

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case.

I. Was The Issue Of The Criminal Nature Of The Termination Agreement Raised In The Lower Court Proceedings?

In the Petition for Writ of Certiorari, Petitioners stated that the issue of the criminal nature of the Termination Agreement had been brought before the district court. Respondent stated in its Brief in Opposition to Petition for Writ of Certiorari that Petitioners "have not and cannot cite the Court to any presentation" of the issue of the criminal nature of the Termination Agreement to the district court for consideration. (Respondent's Brief in Opposition to Petition for Writ of Certiorari p. 6, ¶1). The following paragraphs reveal the presentation of the issue made to the lower courts.

At the trial level in this litigation, the Krugers responded to Respondent's Motion for Summary Judgment by filing with the court a "Motion to Strike Plaintiff's Motion for Summary Judgment." Based on the content of the document, the district court considered it a response to the Motion for Summary

Judgment. (See Appendix D of Petition for Writ of Certiorari, p. 31a, ¶1). The Krugers "Motion to Strike Plaintiff's Motion for Summary Judgment" has been included in relevant part, and attached to this reply as Appendix A. The very first argument made by the Krugers in response to the summary judgment motion was that the Termination Agreement was created for the purpose of criminal tax evasion. (Appendix A, p. 2a). Further, the Krugers claim that the Termination Agreement sought to characterize the Krugers as independent contractors rather than employees for income tax purposes. (Appendix A, p. 5a-6a). Since the district court considered the Krugers motion as a responsive pleading to the motion for summary judgment, the issue of illegality of the Termination Agreement was preserved for appeal.

The Krugers raised a number of issues at the appellate level. The Krugers were representing themselves *pro se* in this litigation, and were going through the difficult hardships of coping with depression, a miscarriage, loss of employment,

permanent disability, and the inability to receive workers compensation. Faced with a much more knowledgeable legal opponent, the Krugers argued everything they could think of, although unbeknownst to them some of what they argued had little legal relevance. Nevertheless, they once again raised the point to the appellate court that the Termination Agreement was illegal. Attached as Appendix B is the Krugers opening brief to the Tenth Circuit in relevant part. The Krugers specifically pointed out to the Tenth Circuit that the Termination Agreement upheld and enforced by the district court injunction would force the Krugers to commit federal crimes. (Appendix B at p. 8a). Similar to the district court, the Tenth Circuit did not address this argument in its decision. However, the issue was raised by the Krugers.

This Reply is limited to the new issue raised by Respondent. While Petitioners certainly disagree with Respondents legal and factual contentions, Petitioners will not dispute those matters in this brief. Suffice it to say, in Petitioners' opinion, that

Respondents legal arguments and factual allegations have about as much merit as the contention that Petitioners "have not and cannot cite the Court to any presentation" of the issue of the criminal nature of the Termination Agreement.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

EXCERPT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DATED FEBRUARY 8, 1996

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

SONIC RESTAURANTS, INC., Plaintiff	)	
	)	Case No.
v.	)	
	)	CIV-95-0796-C
MANFRED KRUGER and CRISTINA KRUGER, Defendants	)	

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Plaintiff's Objection of Extension of Time and Plaintiff's Motion for Summary Judgment filed February 01, 1996 with the Court just show the intention of the Plaintiff to win this case under any

circumstances, hopefully on technicalities since the Defendants are unable to retain legal counsel to properly defend themselves against the accusations of the Plaintiff, and the unlimited resources of the Plaintiff. (Exhibit #171.)

1. This is not a case of a simple contract dispute, but a case of employer tax evasion on a monumental scope (Exhibits #151, #151-A, #152, and #152-A) and false promises and deception as a standard mode of business operation by S.R.I. and Sonic Corp. (Exhibits #159, #160, #161, #170, #171 and #175.)

2. This is also a case of grand deception of false promises of business opportunities to Manfred Kruger and many other victims (Exhibits #18, #159, #160, and #161) and of a conspiracy across state lines by S.R.I. to defraud the Krugers, tax collectors and the workmen's comp. insurance carrier.

3. This is also a case of workmen's comp insurance premium fraud by Sonic Restaurants (S.R.I.) by not reporting employees (Manfred Kruger and others) as employees and by not reporting tipped employees' tips (Exhibit #151-A) as additional wages

to avoid higher payment of employer taxes and higher workmen's comp insurance premiums. The above avoidance and evasion of higher state and federal employer taxes and the avoidance and evasion of higher workmen's comp insurance premiums is also a common practice by Sonic Franchisees, as witnessed by at least two witnesses who worked for Sonic Franchisees besides S.R.I. These witnesses are Dave Barber and Paul Fitzke. (Exhibits #159 and #160.)

[...]

5. The Plaintiff's objection for Extension of Time for the Defendants to retain legal counsel and interference just shows the desperate situation of the Plaintiff because countless exhibits of evidence, mostly generated by S.R.I., shows that Manfred Kruger was an employee and not a contractor and, therefore, the Termination Agreement of 5/02/95 is a fraud and S.R.I.'s own documents as evidence show that. For example, Exhibits #21 to #27 all show in Paragraph 2 that Manfred Kruger was an employee,

because it states, "earned and future wages and bonuses." It does not say contractor fees or invoices. In Paragraph 5 C it states, "The maker's (M. Kruger) termination of employment." It does not say M. Kruger's termination as a contractor. Exhibits #21 to #27 are evidence and a prime example of S.R.I.'s deception. While on April 24, 1995, Manfred Kruger was an employee and S.R.I. addressed Manfred Kruger in those legal documents as an employee, S.R.I. later decided, after M. Kruger proposed all kinds of action against S.R.I. to get his final wages, (Exhibits #162 and 163 dated 4/26/95, Exhibits #164 and #167 dated 4/29/95, Exhibit #165 dated 4/29/95, and Exhibit #166 dated 5/01/95) that Manfred Kruger was a contractor. Now, when evaluating Exhibits #21 to #27, one must remember that those exhibits and documents were drafted and prepared for final signature by Manfred Kruger and S.R.I. by the Legal Department of Sonic Corporation. That same Legal Department also drafted that 5/02/95 Termination of Outside Contractor Agreement and that Legal Department employs at least two full-time in-house attorneys with the staff and resources of a large

company; a legal staff that has prepared hundreds of contracts and more than 1,200 Franchise Agreements. The Legal Department of Sonic has a demonstrated superior knowledge of writing legal contracts and documents, and Exhibits #21 to #27 are a prime example. how come Manfred Kruger (the maker) in those documents is referred to as an employee with "earned and future wages and bonuses" and "the maker's termination of employment voluntary or involuntary?" How come in Exhibit #77, S.R.I.'s documents show a guaranteed bonus (wages), while Exhibits #40 to #47 show Manfred Kruger with 0% ownership in any Sonic Restaurant he supervised as an Area Supervisor (S.R.I.'s title: Supervising Partner.) There was no partnership or ownership. No where in the above documents/exhibits does S.R.I. talk about contractor, contractor fees, contractor invoices, etc. There is no single document prior to 4/27/95 (the firing date of Manfred Kruger) that refers to a contractor status of Manfred Kruger, but there are many S.R.I. documents that show Manfred Kruger as an employee. The reason was that Manfred Kruger's employment was only - repeat, only treated as a

defacto partner/business owner/contractor for tax purposes only so S.R.I. could financially gain from that, while for all other purposes and facts, Manfred Kruger was an employee. S.R.I., for obvious reasons, got the best of two worlds - the tax savings (evasion) for treating Manfred Kruger and many others as non-employees when it came to employer tax matters and workmen's comp insurance premiums, while when it came to day-by-day operations, treating Manfred Kruger and many others as employees, as S.R.I.'s own documents show, so S.R.I. could exercise control and authority, which S.R.I. did with any employee as any employer does. Even in day-by-day accounting matters, Exhibits #89, #91, #93, #94, #97, #99 and #100, S.R.I.'s own evidence shoes Manfred Kruger as an employee, because he was an employee. And, the most important fact is that there is no document, no contract or agreement, and no witness prior to 4/27/95, the termination date of Manfred Kruger, that shows any outside contractor status, while the statements of three different witnesses show the evidence that S.R.I. had control over Manfred Kruger

and Manfred Kruger was an employee (Exhibits #159, #160 and #161.) [...]

[...]

APPENDIX B

EXCERPTS OF APPELLANT'S OPENING BRIEF DATED JULY 10, 1996

Statement of Facts Relevant to the Issues Presented for Review, §2 (B), p. 3:

"The evidence also shows that S.R.I. forced the Krugers into an unconscionable contract in violation of public policy and contrary to facts and events. While Manfred Kruger was an employee, S.R.I. demanded that he was an 'outside contractor.'"

Statement of Facts Relevant to the Issues Presented for Review, §2 (D), p. 4:

"The Judgment of the District Court of May 29, 1996, is a retroactive, Court-ordered falsification of facts, events and evidence and requires Manfred Kruger to openly lie about his employment with S.R.I. to governmental agencies in pending cases with the I.R.S., the North Carolina Unemployment Commission, and the Industrial Commission of North Carolina. This is Court-ordered obstruction of justice, and two years of my life are erased by Court order."